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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 386 (JGK)

5 CORY HARRIS,
6 a/k/a "Hop,"
7 a/k/a "P,"

Plea

8 Defendant.

9 -----x

10 New York, N.Y.
11 March 17, 2017
12 12:00 p.m.

13 Before:

14 HON. JOHN G. KOELTL,

District Judge

15 APPEARANCES

16
17 JOON H. KIM
18 Acting United States Attorney for
19 the Southern District of New York
20 ANDREW C. ADAMS
21 MARGARET S. GRAHAM
22 HADASSA R. WAXMAN
23 Assistant United States Attorneys

24 BOBBI C. STERNHEIM
25 GRAINNE O'NEILL
Attorneys for Defendant

Also Present: Anthony Melchiorri, Special Agent, ATF

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(Case called)

THE COURT: Good afternoon, all. I have a plea agreement before me. I've marked it as Court Exhibit 1. It's a March 10, 2017, letter to Ms. Sternheim from the government, signed by two government people, and it appears to be signed by Mr. Harris and Ms. Sternheim today, March 17, 2017.

There are some preliminary issues. The first is there was a series of emails to my deputy, Mr. Fletcher, from Ms. Sternheim, copied to the government. One email was at 1:49 p.m., which says:

"Mr. Harris does not want to accept the plea offer and does not want either myself or Ms. O'Neill to represent him at trial. Our apologies for this late notice. Bobbi," and Ms. Sternheim's signature block;

Another email from Ms. Sternheim at 10:34 this morning, which says:

"Ms. O'Neill and I have met with Mr. Harris and he wishes to accept the plea offer and proceed with change of plea at noon. Thank you. Bobbi," Ms. Sternheim's signature block, and again copied to the government attorneys.

My deputy forwarded those to me, so I would cover in any event in the course of the plea allocution the fact that Mr. Harris desires to enter a guilty plea pursuant to the plea agreement, and that he is satisfied with his counsel. Before I begin any plea allocution, I want to ask whether any

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1 differences between Mr. Harris and his lawyers have been
2 resolved and whether Mr. Harris is satisfied with his counsel
3 and has had sufficient opportunity to discuss the potential
4 plea with his counsel and whether he wishes to plead guilty
5 knowingly and voluntarily before I go through the more detailed
6 plea allocution.

7 Ms. Sternheim.

8 MS. STERNHEIM: Your Honor, it is my understanding, as
9 stated in my last email, having met with Mr. Harris this
10 morning, with Ms. O'Neill, that he wishes to proceed with the
11 plea offer summarized in his plea agreement, and that he wishes
12 us to continue as his attorneys. I think it's better left for
13 the Court to ask Mr. Harris directly with regard to the issue
14 of whether issues have been resolved, because the issues did
15 not emanate from my end, so I think it's best for the Court to
16 inquire whether he is satisfied with us continuing to represent
17 him.

18 THE COURT: OK. Mr. Harris.

19 MS. STERNHEIM: May he sit, or would you like him to
20 stand?

21 THE COURT: Whatever is convenient.

22 MS. STERNHEIM: Sitting is more convenient.

23 THE DEFENDANT: Yes, all issues are resolved, your
24 Honor, and I'd like to proceed.

25 THE COURT: Are you satisfied with Ms. Sternheim and

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1 Ms. O'Neill's representation of you?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: Have you met with them and talked with
4 them about your case?

5 THE DEFENDANT: Yes, I met with them. We spoke.

6 THE COURT: Have they discussed with you the
7 advantages and disadvantages of entering a plea of guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you satisfied that you have resolved
10 any issues that you had with them with respect to their
11 representation of you?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, I don't want to inquire into any
14 attorney-client privilege issues between you and your lawyers,
15 but I just want to make sure that whatever issues you had with
16 them that led you to tell Ms. Sternheim that you wanted a new
17 lawyer have been resolved and that you're satisfied and that
18 you want to continue with them in their representation of you.
19 Do you understand what I'm asking?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you resolved those issues, and are
22 you satisfied to have them continue to represent you?

23 THE DEFENDANT: Yes.

24 THE COURT: OK. Ms. Sternheim, are you satisfied that
25 you can continue to represent Mr. Harris?

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1 MS. STERNHEIM: Absolutely, Judge.

2 THE COURT: OK. Are you satisfied from your end that
3 whatever issues arose between you and Mr. Harris have been
4 satisfied and that you're able to freely communicate with him
5 and have a productive attorney-client relationship with him?

6 MS. STERNHEIM: Definitely.

7 THE COURT: OK. Does the government think I should
8 ask any other questions on this issue?

9 MR. ADAMS: No, your Honor. Thank you.

10 THE COURT: Then the next issue is the plea agreement.
11 As I'll discuss, the Court is not bound by the plea agreement,
12 but the Court reads the plea agreement, of course.

13 Now, the Court was provided with a plea agreement,
14 dated March 10, 2017, not signed by the parties, and then this
15 morning I have what is marked as the original March 10, 2017,
16 plea agreement, which is marked as Court Exhibit 1 and is
17 stamped "original" and is signed by the parties. As I say, the
18 Court is not bound by the plea agreement, but the Court reads
19 the plea agreement.

20 Could the government tell me what the changes are
21 between the copy dated March 10 and the original now that's
22 signed, dated March 10.

23 MR. ADAMS: Your Honor, the signed copy that is marked
24 "original," as discussed with defense counsel earlier, made one
25 change to the version that I think was circulated previously --

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1 two changes, actually.

2 The first is on the first page. Previously the
3 original version, as circulated, had stated that there was a
4 mandatory term of supervised release. That has been removed.
5 Under 848(e), we believe that there's a five-year maximum,
6 there's no mandatory minimum, and so that change is reflected
7 in the signed original agreement.

8 THE COURT: The supervised release is simply a maximum
9 term of five years.

10 MR. ADAMS: That's correct, your Honor. The signed
11 version should reflect that.

12 There was a typo on the second page. The guidelines
13 level is 41. I think at the very bottom of the second page, in
14 a prior version, it said "at guidelines level 40," the
15 applicable fine range is what it is.

16 THE COURT: Right.

17 MS. STERNHEIM: That's been changed to say 41.

18 THE COURT: OK.

19 MR. ADAMS: Other than that, no other changes.

20 THE COURT: All right. Then I have some additional
21 questions. Where do you get the maximum fine of \$2 million?

22 MR. ADAMS: In 848 itself, your Honor. It's in
23 848(a).

24 THE COURT: Is it clear that that's right? (e)(1)(A)
25 says, "any person engaged in or working in furtherance of a

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1 continuing criminal enterprise, or any person engaging in an
2 offense punishable under Section 841(b)(1)(A) of this title, or
3 Section 960(b)(1) of this title, who intentionally kills,
4 counsels, commands, induces, procures, or causes the
5 intentional killing of an individual, and such killing results,
6 shall be sentenced to any term of imprisonment that shall not
7 be less than 20 years and may be up to life imprisonment, and
8 may be subject to death."

9 (e)(1)(A) seems to draw a distinction between a person
10 engaged in or working in furtherance of a continuing criminal
11 enterprise and a person engaging in an offense punishable under
12 Section 841(b)(1)(A), which is what's charged here. 848(a) has
13 a \$2 million fine for a person engaged in a continuing criminal
14 enterprise.

15 I would suggest that it is probably academic and that
16 the better course of valor would be to replace \$2 million with
17 \$250,000, or twice the gross pecuniary gain derived from the
18 offense or twice the gross pecuniary loss. Before you write
19 anything, the next issue, then, is that same paragraph
20 describes, in violation of Title 18, United States Code,
21 Sections 848(e) and 2. That's plainly wrong.

22 MR. ADAMS: That's incorrect.

23 THE COURT: It's Title 21, United States Code, Section
24 848(e) and 18 U.S.C. Section 2.

25 MR. ADAMS: Yes.

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1 THE COURT: Let me pass the original of the plea
2 agreement down. And if it's right that \$2 million shouldn't be
3 included, then on page 2, the final sentence should be the fine
4 range is 50,000 to a maximum of 500,000, which is the guideline
5 for level 41.

6 MR. ADAMS: Thank you, your Honor. We agree that the
7 fine range is academic, and I take your point on the way that
8 this is charged with respect to 848(e), so we'll make that
9 change.

10 On the fine what I would propose writing is 250,000 or
11 twice the gross pecuniary gain. That way the fine range under
12 the guidelines isn't capped, so it still goes up to \$500,000.

13 THE COURT: It's capped at 500,000.

14 MR. ADAMS: Correct.

15 THE COURT: The guideline is 50,000 to 500,000.

16 MR. ADAMS: That's correct, your Honor, and then on
17 the statutory side it would be 250,000 or twice.

18 THE COURT: Twice, that's right.

19 MR. ADAMS: And one other conforming edit on page 4
20 with respect to the fine.

21 THE COURT: All right. Mr. Fletcher, please
22 administer the oath to the defendant.

23 (Defendant sworn)

24 THE DEPUTY CLERK: Please state your full name slowly
25 for the record.

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1 THE DEFENDANT: Cory Harris.

2 THE COURT: You can remain seated. Keep your voice up
3 and use the microphone.

4 Mr. Harris, do you understand you are now under oath,
5 and that if you answer any of my questions falsely, your false
6 or untrue answers may later be used against you in another
7 prosecution for perjury or making a false statement?

8 THE DEFENDANT: Yes.

9 THE COURT: Tell me your full name, please.

10 THE DEFENDANT: Cory Harris.

11 THE COURT: How old are you?

12 THE DEFENDANT: 33 years old.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: I have a GED.

15 THE COURT: I'm sorry?

16 THE DEFENDANT: I have a GED.

17 THE COURT: GED? Are you a citizen of the United
18 States?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you able to speak and understand
21 English?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you now or have you recently been
24 under the care of a doctor or a psychiatrist?

25 THE DEFENDANT: No.

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1 THE COURT: Have you ever been treated or hospitalized
2 for any mental illness or any type of addiction, including drug
3 or alcohol addiction?

4 THE DEFENDANT: No.

5 THE COURT: In the past 24 hours, have you taken any
6 drugs, medicines, or pills, or have you drunk any alcohol?

7 THE DEFENDANT: No.

8 THE COURT: Is your mind clear today?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you feeling all right today?

11 THE DEFENDANT: Yes.

12 THE COURT: Do either counsel have any doubt as to the
13 defendant's competence to plead at this time?

14 MR. ADAMS: No, your Honor.

15 MS. STERNHEIM: No.

16 THE COURT: Now, Mr. Harris, Ms. Sternheim, your
17 lawyer, has informed me that you wish to enter a plea of guilty
18 to Count Five of the superseding indictment. Is that what you
19 wish to do?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you had a full opportunity to discuss
22 your case with Ms. Sternheim and to discuss the consequences of
23 entering a plea of guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you satisfied with Ms. Sternheim and

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1 her representation of you?

2 THE DEFENDANT: Yes.

3 THE COURT: On the basis of Mr. Harris' responses to
4 my questions and my observations of his demeanor, I find that
5 he is fully competent to enter an informed plea at this time.

6 Now, Mr. Harris, before I accept any plea from you,
7 I'm going to be asking you certain questions. My questions are
8 intended to satisfy me that you wish to plead guilty because
9 you are, in fact, guilty and that you fully understand the
10 consequences of your plea, and furthermore, that you are
11 pleading guilty knowingly and voluntarily, and that there is an
12 independent basis in fact for your plea. Do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: I'm now going to describe to you certain
16 rights that you have under the Constitution and laws of the
17 United States, which rights you will be giving up if you enter
18 a plea of guilty. Please listen to me very carefully. If
19 there is anything that I say that you don't understand -- if
20 there's anything I say that you don't understand -- please ask
21 me to stop, and either I or Ms. Sternheim will explain it to
22 you more fully. All right?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Harris, under the Constitution and
25 laws of the United States, you have a right to a speedy and

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1 public trial by a jury on the charges against you which are
2 contained in the superseding information. Do you understand
3 that?

4 THE DEFENDANT: Yes.

5 THE COURT: If there were a trial, you would be
6 presumed to be innocent and the government would be required to
7 prove you guilty by competent evidence and beyond a reasonable
8 doubt. You would not have to prove that you were innocent at
9 trial. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If there were a trial, a jury composed of
12 12 people selected from this district would have to agree
13 unanimously that you were guilty. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If there were a trial, you would have a
16 right to be represented by a lawyer, and if you could not
17 afford a lawyer, a lawyer would be provided to you free of
18 cost. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: In fact, Mr. Harris, you have a right to
21 be represented by a lawyer at trial and at every other stage of
22 the proceedings against you, and if you could not afford a
23 lawyer, a lawyer would be provided to you free of cost. Do you
24 understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: If there were a trial, you would have the
2 right to see and hear all of the witnesses against you and your
3 attorney could cross-examine them. You would have a right to
4 have your attorney object to the government's evidence and
5 offer evidence on your behalf, if you so desired, and you would
6 have the right to have subpoenas issued or other compulsory
7 process used to compel witnesses to testify in your defense,
8 and you would not be required to testify. Do you understand
9 all of that?

10 THE DEFENDANT: Yes.

11 THE COURT: If there were a trial, you would have the
12 right to testify if you wanted to, but no one could force you
13 to testify if you didn't want to, and furthermore, no inference
14 or suggestion of guilt could be drawn if you chose not to
15 testify at trial. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Harris, do you understand each and
18 every one of the rights that I've described to you?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you have any questions about any of
21 those rights?

22 THE DEFENDANT: No questions.

23 THE COURT: Do you understand that by entering a plea
24 of guilty today you are giving up each and every one of those
25 rights; that you are waiving those rights; and that you will

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1 have no trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you can change your
4 mind right now and refuse to enter this plea of guilty? You
5 don't have to enter this plea if you don't want to for any
6 reason at all. Do you understand that completely?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, Mr. Harris, you've received a copy of
9 the superseding information against you, is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you read it?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you discuss it with your lawyer?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand what you are charged
16 with in the superseding information?

17 THE DEFENDANT: Yeah.

18 MS. STERNHEIM: Your Honor, it was an indictment, just
19 for clarity.

20 THE COURT: I'm sorry. Superseding indictment. Thank
21 you.

22 Mr. Harris, when I've referred to the superseding
23 information, I meant the superseding indictment. Do you
24 understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: So every time I said superseding
2 information, you should take that to mean superseding
3 indictment. Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: OK. So you've received a copy of the
6 superseding indictment, is that correct?

7 THE DEFENDANT: Yes.

8 THE COURT: And have you read it?

9 THE DEFENDANT: Yes, I read it.

10 THE COURT: And did you discuss it with your lawyer?

11 THE DEFENDANT: Yeah.

12 THE COURT: Do you understand what you are charged
13 with in the superseding indictment?

14 THE DEFENDANT: Yes.

15 THE COURT: I understand that you wish to enter a plea
16 of guilty to Count Five of the superseding indictment, so let
17 me go over that count with you to assure myself that you
18 understand what the government would be required to prove
19 beyond a reasonable doubt at trial before you could be
20 convicted of the crime charged in Count Five.

21 Count Five of the superseding indictment reads:

22 "The grand jury further charges, on or about December
23 28, 2014, in the Southern District of New York, while engaged
24 in an offense punishable under Section 841(b)(1)(A) of Title
25 21, United States Code, namely a conspiracy to distribute, and

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1 to possess with the intent to distribute, 280 grams and more of
2 mixtures and substances containing a detectable amount of
3 cocaine base, in a form commonly known as crack, Cory Harris,
4 also known as "Hop," also known as "P," the defendant,
5 intentionally and knowingly killed and counseled, commanded,
6 induced, procured, and caused the intentional killing of
7 Rashaun Nicholson and did aid and abet the intentional killing
8 of Nicholson in the vicinity of 78 Catherine Street, New York,
9 New York, in violation of Title 21, United States Code, Section
10 848(b)(1)(A) and Title 18, United States Code, Section 2."

11 Do you understand that's what you are charged with in
12 Count Five of the superseding indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that if you did not
15 plead guilty, the government would be required to prove beyond
16 a reasonable doubt at trial each of the following elements of
17 the offense:

18 First, that you, the defendant, were engaged in a
19 conspiracy to distribute or to possess with the intent to
20 distribute a controlled substance, specifically, 280 grams or
21 more of mixtures and substances containing a detectable amount
22 of cocaine base in a form commonly known as crack;

23 Second, that you, the defendant, intentionally killed
24 or counseled or commanded or induced or procured or caused the
25 intentional killing of Rashaun Nicholson;

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1 Third, that the killing of Rashaun Nicholson actually
2 resulted from the defendant's -- that is your -- actions;

3 And fourth, that such killing occurred because of and
4 as part of the defendant's -- that's your -- working in
5 furtherance of the conspiracy to distribute controlled
6 substances described in the first element of the offense.

7 Do you understand the government would be required to
8 prove all of that beyond a reasonable doubt at trial?

9 THE DEFENDANT: Yes.

10 THE COURT: Count Five also alleges aiding and
11 abetting, which means that if the government failed to prove
12 that you personally committed the crime charged in Count Five,
13 you could be convicted of the crime charged in Count Five if
14 the government proved beyond a reasonable doubt that another
15 person committed all of the elements of the crime charged in
16 Count Five and that you aided and abetted that person in the
17 commission of the crime.

18 In order to aid or abet another to commit a crime,
19 it's necessary that the defendant -- that's you -- willfully
20 and knowingly associated yourself in some way with the crime
21 and that you willfully and knowingly sought by some act to help
22 make the crime succeed. The jury should be asked, "Did the
23 defendant -- that's you -- participate in the crime charged as
24 something you wished to bring about? Did you associate
25 yourself with the crime charged knowingly and willfully? Did

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1 you seek by your actions to make the crime charged succeed?

2 If the government has proved beyond a reasonable doubt
3 that you, the defendant, did all of those things, you, the
4 defendant, are an aider and abetted and therefore guilty of the
5 crime charged in Count Five. I've explained to you the
6 elements that the government would have to prove beyond a
7 reasonable doubt before you could be convicted of the crime
8 charged in Count Five, or what the government would have to
9 prove to prove you guilty of aiding and abetting another person
10 in the commission of the crime charged in Count Five. Do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Now let me go over the penalty for the
14 crime charged in Count Five.

15 Count Five carries a maximum term of lifetime
16 imprisonment and a mandatory minimum term of 20 years'
17 imprisonment -- in other words, the minimum sentence of
18 imprisonment that the Court can impose is 20 years, and the
19 maximum term of imprisonment is life; a maximum term of
20 supervised release of five years; a maximum fine of \$250,000,
21 or twice the gross pecuniary gain derived from the offense or
22 twice the gross pecuniary loss to a person other than yourself
23 as a result of the offense, and a \$100 mandatory special
24 assessment.

25 Do you understand that's the maximum penalty for the

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1 crime charged in Count Five as well as the mandatory minimum
2 penalty for the crime charged in Count Five?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you also understand that when I talk
5 about supervised release, supervised release means that you
6 will be subject to monitoring when you are released from
7 prison, and the monitoring is to be under terms and conditions
8 which could lead to reimprisonment without a jury trial if you
9 violate them?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if you violated the
12 terms of supervised release and were sentenced to prison, you
13 could be sentenced to prison for the entire term of supervised
14 release without any credit for any time you had already spent
15 on supervised release?

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you also understand that as part of
19 your sentence, I can also order restitution to any person
20 injured as a result of your criminal conduct?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand?

23 There is no forfeiture allegation, correct?

24 MR. ADAMS: Correct, your Honor.

25 THE COURT: OK. Mr. Harris, do you also understand

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1 that if I accept your guilty plea and adjudge you guilty, that
2 adjudication may deprive you of valuable civil rights, such as
3 the right to vote, the right to hold public office, the right
4 to serve on a jury, and the right to possess any kind of
5 firearm?

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, Mr. Harris, under current law, there
9 are sentencing guidelines that judges must consult in
10 determining your sentence. You have spoken to your lawyers
11 about the sentencing guidelines, haven't you?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that I, as the
14 sentencing court, will not be able to determine your guideline
15 sentencing range until after the probation department has
16 completed a presentence report and after you and your lawyers
17 and the government have had an opportunity to review that
18 report, to challenge anything contained in the report, and to
19 bring those challenges to my attention?

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you also understand that even after
23 it's determined what the basic guideline sentencing range is in
24 your case, I have the authority in some circumstances to depart
25 upward or downward from the sentence that is otherwise called

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1 for by the guidelines in determining what your guidelines
2 sentencing range is?

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And even after that range is determined,
6 taking into account any upward or downward departures, I must
7 then consider other statutory factors to arrive at a final
8 conclusion as to what the appropriate and reasonable sentence
9 is in your case. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that if you're
12 sentenced to prison, parole has been abolished and you will not
13 be released any earlier on parole?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if your lawyer or
16 anyone else has attempted to estimate or predict what your
17 sentence will be, their estimate or prediction could be wrong?

18 THE DEFENDANT: Yes.

19 THE COURT: No one, Mr. Harris -- not your lawyer, not
20 the government, no one -- can or should give you any assurance
21 of what your sentence will be, since that sentence can only be
22 determined after the probation department has completed the
23 presentence report, after I have ruled on any challenges to the
24 report, and after I have determined what the appropriate and
25 reasonable sentence is in your case. Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: And do you also understand that even if
3 your sentence is different from what your lawyer or anyone else
4 told you that it might be, or if it's different from what you
5 expect it to be, you will still be bound by your guilty plea
6 and you will not be allowed to withdraw your plea of guilty?

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, Mr. Harris, I've been given the plea
10 agreement which you heard me talk about at the outset with the
11 government and your lawyer. It's the March 10, 2017, letter
12 from the government to Ms. Sternheim. It appears to be signed
13 by two people with the government and appears to be signed by
14 you and Ms. Sternheim today, March 17, 2017. I've marked it as
15 Court Exhibit 1.

16 Have you signed this plea agreement?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you read the agreement before you
19 signed it?

20 THE DEFENDANT: Yes.

21 THE COURT: Did you discuss it with your lawyer before
22 you signed it?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you fully understand the agreement
25 before you signed it?

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1 THE DEFENDANT: Yes.

2 THE COURT: Does this letter agreement constitute your
3 complete and total understanding of the entire agreement
4 between the government, your lawyer, and you?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anything been left out?

7 THE DEFENDANT: No.

8 THE COURT: Has anyone offered you any inducements or
9 threatened you or forced you to plead guilty or to enter into
10 this plea agreement?

11 THE DEFENDANT: No.

12 THE COURT: There is a provision of the plea agreement
13 that provides that the defendant will not file a direct appeal
14 nor bring a collateral challenge, including, but not limited
15 to, an application under Title 28, United States Code, Section
16 2255 and/or Section 2241, nor seek a sentence modification,
17 pursuant to Title 18, United States Code, Section 3582(c), of
18 any sentence within or below the stipulated guidelines range of
19 360 months to life imprisonment. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that if I sentence you
22 to life imprisonment or less, you have given up your right to
23 appeal or challenge in any proceeding, including any habeas
24 corpus proceeding, any such sentence?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you also understand that the Court --
2 that's me -- is not bound by this plea agreement or by any of
3 the provisions in the plea agreement?

4 The Court must make an independent determination of
5 the appropriate sentence in your case, and even if that
6 sentence differs from anything that's contained in the plea
7 agreement, you will still be bound by your guilty plea and you
8 will not be allowed to withdraw your plea of guilty. Do you
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Ms. Sternheim, do you know of any valid
12 defense that would prevail at the trial of Mr. Harris?

13 MS. STERNHEIM: No.

14 THE COURT: Do you know of any reason why Mr. Harris
15 should not be permitted to plead guilty?

16 MS. STERNHEIM: No.

17 THE COURT: Mr. Harris, please tell me what you did in
18 connection with the crime to which you are entering a plea of
19 guilty, Count Five of the superseding indictment.

20 THE DEFENDANT: Beginning 2012 to --

21 THE COURT: Please go a little slower, Mr. Harris.

22 THE DEFENDANT: During 2012 to 2015, I agreed with
23 others to distribute drugs, including marijuana, heroin, and
24 crack cocaine. During the course of the conspiracy, at least
25 280 grams of crack were sold in Manhattan and Vermont. In

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1 connection with this drug-trafficking offense, I possessed a
2 gun in Manhattan, and at my direction, a member of this group
3 shot Rashaun Nicholson in Manhattan, causing his death. I knew
4 what I did was wrong and against the law.

5 THE COURT: All right. You said that at your
6 direction people shot Rashaun Nicholson in Manhattan. Is that
7 correct?

8 THE DEFENDANT: Yes.

9 THE COURT: And as a result of that, was Rashaun
10 Nicholson killed?

11 THE DEFENDANT: Yes.

12 THE COURT: And was that killing because of and as
13 part of your engaging in the conspiracy to distribute drugs,
14 including 280 grams or more of crack?

15 THE DEFENDANT: Yes.

16 THE COURT: And you said that the agreement to
17 distribute crack included acts in the Bronx, is that right?
18 Did I hear you --

19 THE DEFENDANT: Manhattan.

20 THE COURT: In Manhattan, OK. And the killing of
21 Mr. Nicholson was in Manhattan, is that right?

22 THE DEFENDANT: Yes.

23 THE COURT: When you did the acts that you described
24 to me -- oh, by the way, the killing of Mr. Nicholson occurred
25 in December 2014, is that right?

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1 THE DEFENDANT: Yes.

2 THE COURT: When you did the acts that you've
3 described to me, did you know that what you were doing was
4 wrong and illegal?

5 THE DEFENDANT: Yes.

6 THE COURT: Does the government want me to ask any
7 other questions of the defendant?

8 MR. ADAMS: No, your Honor. Thank you.

9 THE COURT: Tell me what the government's evidence
10 would be at trial.

11 MR. ADAMS: Your Honor, the evidence would include
12 testimony from several cooperating witnesses, as set forth in
13 the government's papers previously, that would include
14 discussions about the manners and methods of selling crack
15 cocaine, marijuana, and heroin with Mr. Harris as a source of
16 supply of both crack and heroin as well as marijuana. The same
17 witnesses would testify regarding the movement of those
18 narcotics between Manhattan and Vermont. They would testify
19 regarding the death of Mr. Nicholson in connection with that
20 overall conspiracy. Particularly, they would describe the
21 motivation for the killing as retribution for the theft of a
22 portion of narcotics and the theft of firearms used by
23 Mr. Harris in furtherance of that same narcotics conspiracy.

24 The evidence would also include geo-location data from
25 cellular telephones associated with the shooter in this case,

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1 Mr. Jenkins, who is also charged in the same case, as well as
2 at least two other people involved in the plot to murder
3 Mr. Nicholson.

4 It would involve text messages and data from cellular
5 telephones, including the telephones of Mr. Harris himself, as
6 well as the telephones of other members of the conspiracy.
7 Those text messages would corroborate much of the testimony
8 from the cooperating witnesses, including with respect to the
9 quantities of drugs involved, the manner of moving drugs and
10 selling drugs, the source of supply of these narcotics, and I
11 think most pertinent, the ruse to lure Mr. Nicholson to his
12 death.

13 THE COURT: And would the government's evidence
14 establish the defendant's guilt beyond a reasonable doubt?

15 MR. ADAMS: Absolutely.

16 THE COURT: All right.

17 Mr. Harris, how do you plead to the charge against you
18 in Count Five of the superseding indictment; guilty or not
19 guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Are you pleading guilty because you are,
22 in fact, guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you pleading guilty voluntarily and of
25 your own free will?

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1 THE DEFENDANT: Yes.

2 THE COURT: Before I finally accept the defendant's
3 plea, Ms. Sternheim, do you want me to ask any other questions
4 of the defendant?

5 MS. STERNHEIM: No, your Honor.

6 THE COURT: Do you know of any reason that I should
7 not accept his plea?

8 MS. STERNHEIM: No, I do not.

9 THE COURT: Before I finally accept the defendant's
10 plea, does the government want me to ask any other questions of
11 the defendant?

12 MR. ADAMS: No, your Honor. Thank you.

13 THE COURT: Does the government know of any reason
14 that I should not accept his plea?

15 MR. ADAMS: No.

16 THE COURT: Mr. Harris, because you acknowledge that
17 you are guilty as charged in Count Five of the superseding
18 indictment, because I find that you know your rights and are
19 waiving them knowingly and voluntarily, because I find that
20 your plea is entered knowingly and voluntarily and is supported
21 by an independent basis in fact containing each of the
22 essential elements of the offense, I accept your guilty plea
23 and I adjudge you guilty of the offense to which you have
24 pleaded.

25 Mr. Harris, the probation department will now prepare

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1 the presentence report to assist me in sentencing you. You
2 will be interviewed by the probation department. It's very
3 important that the information you provide to the probation
4 department be truthful and accurate. The presentence report is
5 very important to me in my decision as to what your sentence
6 will be. You and your lawyer will have the opportunity to
7 review the presentence report, to challenge anything contained
8 in the report, and then to speak on your behalf at sentencing.

9 Date fixed for sentence, Mr. Fletcher.

10 THE DEPUTY CLERK: Friday, June 23, 2017, at 2:30 p.m.

11 THE COURT: Is that satisfactory, June 23, 2017, at
12 2:30 p.m.?

13 MS. STERNHEIM: That is fine for the defendant.

14 THE COURT: Government.

15 MR. ADAMS: Thank you, your Honor. Yes.

16 THE COURT: OK. I'd ask for defense submissions 14
17 days before sentence, the government submission eight days
18 before sentence.

19 Anything further?

20 MR. ADAMS: Nothing for the government, your Honor.

21 MS. STERNHEIM: No. Thank you.

22 THE COURT: OK. I'm returning Court Exhibit 1 to the
23 government.

24 Good afternoon, all.

25 (Adjourned)